Bank of Pittsburg v. Mylin, 76 Fed., 385. And no determination of the constitutional question involved in the making of a specific assessment, for street improvement by an administrative board can bar a suit in a national court, to test the question, whether by means of such determination the state has deprived the complainant of his property without due process of law. *White v. The City of Tacoma,* 109 Fed., 32.

In *Barney v. The City of New York,* 193 U. S., 430, it was held, where the jurisdiction of the Circuit Court is invoked on the ground of the deprivation of property without due process of law, in violation of the fourteenth amendment, it must appear at the outset, that the alleged deprivation was by act of the state. And where it appeared on the plaintiff's own statement of his case, that the act complained of was forbidden by the state legislature in question, the Circuit Court rightly declined to proceed further and dismissed the suit. When it is alleged in a petition for a writ of habeas corpus, that by the action of a judge of a police court of a city, a person has been deprived of his liberty without due process of law, and consequently against the Constitution of the United States, the federal court or judge thereof has jurisdiction to issue a writ of habeas corpus. *In re Monroe, In re Masquandt,* 46 Fed., 52. And where the legislature attempted to convey property from one person to another without due process of law it was held that the federal court had jurisdiction. *Crystal Spring Land and Water Co. et al. v. The City of Los Angeles,* 76 Fed., 148.

Therefore, from the cases cited, it would seem that the weight of authority is contrary to the doctrine enunciated in the principle case. But it must be born in mind that the precise question has not been passed on by any court of last resort, and if the question were to be presented, the doctrine of the principle case might be affirmed. By the authorities above cited and discussed, questions similar to it have been decided contrary to it, therefore it would seem that the doctrine therein set forth is not sustained by the weight of authority.

WHAT CONSTITUTES CRUEL AND INHUMAN TREATMENT.

One of the most confusing subjects in American divorce law to-day is, what constitutes cruel and inhuman treatment, under

statutes making such treatment grounds for divorce. The decisions in the several states are in a state of hopeless confusion, which it is hoped will be settled and laid at rest by some scheme of reform legislation, which may result from a movement now on foot, designed to accomplish such a needed and welcome reform. The law being in such a state of conflict, it is interesting to note the case of *Zweig v. Zweig,* 93 N. E. (Ind.), 234, recently decided by the Appellate Court of Indiana.

The statute of that state, *Burns' Annotated Statutes of* 1908, section 1067, provides that cruel and inhuman treatment shall be ground for divorce. The question was whether the defendant had been guilty of such treatment, within the meaning of the statute. The plaintiff and the defendant were married on November 12, 1904. After the lapse of six months from that date, and until February 16, 1907, the defendant refused to speak to or hold any conversation with the plaintiff, or to permit her to converse in any manner with him, and when she attempted to do so, he would say that he wanted to have nothing to do with her. He refused to visit the neighbors with her and would not permit the neighbors to call on her. The court sustained a divorce granted upon these facts, under the above mentioned statute.

In *Kuhl v. Kuhl,* 56 Pac., 629 (Cal.), the court held, evidence that, after the husband without cause, had deserted his wife, who was at the time sick, she missed her diamonds and her seal skin sacque, and reported to friends of his, that she thought he had taken them, is insufficient to entitle her to a divorce on the grounds of extreme cruelty. This is in accordance with the doctrine of the early cases, which define cruel treatment within the meaning of the statutes, making such treatment a ground for divorce, "as the wilful infliction of pain, bodily or mental, upon the complaining party, such as reasonably justifies an apprehension of danger to life, limb or health." *Ring v. Ring,* 118 Ga., 183. Therefore, under the above definition it was held, that the habitual and intemperate use of morphine is not such cruel treatment, unaccompanied by such conduct as laid down in the definition. The intention to wound is a necessary element of the cruel treatment for which a divorce is allowed. *Ring v. Ring, Supra; Odom v. Odom,* 36 Ga., 286.

Cruel and inhuman treatment within the meaning of a statute making such treatment a ground for divorce, is that kind of

treatment that indicates a settled aversion to the wife and permanently destroys her peace or happiness, and this character of cruelty may habitually manifest itself in various ways that fall short of assault or bodily injury. *Hooe v. Hooe,* 29 Ken. L. R., 113. And such conduct need not be attended with an apprehension of violence or danger. *Hooe v. Hooe, Supra.*

The tendency of the construction of modern statutes is to allow a liberal one, and the modern cases have departed from the earlier cases, which required the wilfull infliction of pain, bodily or mental. *Ring v. Ring, Supra.* In *Barnes v. Barnes,* 95 Cal., 171, the court said: "The tendency of modern decisions, reflecting the advanced civilization of the present age, is to view marriage from a different standpoint, than as a mere physical relation. It is now more wisely regarded as a union affecting the mental and spiritual life of the parties to a relation designed to bring to them the comforts and facilities of home life, and between whom in order to fulfill such design, there should exist mutual sentiments of love and affection. 'It was formerly thought that, to constitute extreme cruelty, such as would authorize the granting of a divorce, physical violence was necessary, but the modern and better considered cases have repudiated this doctrine, as taking too low and sensual a view of the marriage relation, and it is now very generally held, that any unjustifiable conduct of either the husband or wife which so grievously wounds the feelings of the other, or so utterly destroys the peace of mind of the other as to seriously impair the health, or such as ultimately destroys legitimate ends and objects of matrimony, constitutes extreme cruelty under the statutes.'"

The decisions do not confine the definition of extreme cruelty to physical violence, but the grievance whether mental or physical must be of the most aggravated nature in order to justify a divorce. *Cooper v. Cooper,* 17 Mich., 205. And profane, obscene and insulting language habitually used toward a person of sensitive nature and refined feeling may amount to extreme cruelty. *Bennett v. Bennett,* 24 Mich., 483. Mutual wrangling over money matters between husband and wife does not make out a case of extreme cruelty. *Beller v. Beller,* 50 Mich., 49. Where the complainant was intensely jealous of her husband without just cause, his application to have her adjudged insane, made in a *bona fide* belief that her statements attributing improper conduct

to him, were induced by an unbalanced mind, was not such cruelty as would entitle her to a divorce. *Reichert v. Reichert,* 24 Mich., 694. Since it is held that physical violence is necessary to constitute cruel and inhuman treatment, under the Illinois statute, refusal to co-habit is not extreme cruelty. *Severns v. Severns,* 107 Ill. App., 141. But in *Campwell v. Campwell,* 112 N. W., 481 (Mich.), it was held that the refusal of a wife for three years to co-habit with her husband was extreme cruelty under a similar statute. And in *Maddox v. Maddox,* 189 Ill., 152, where the defendant failed to supply the complainant and her children with food and a suitable place of habitation, it was held, that under the statute of that state cruelty, to be ground for divorce, must consist of acts of physical violence. But in no instance is a single act of physical violence sufficient ground for a divorce. *Werres v. Werres,* 102 Ill. App., 360.

In the case of *Rice v. Rice,* 6 Ind., 100, cold neglect was held to be cruel and inhuman treatment, and the court said with reference to an instruction, "We may remark of this instruction that it seems to contemplate an entirely physical, sensual view of the marriage relation, and if that relation has no aim to the social happiness and mental enjoyments of those united in it, the instruction should have been given. But if it be otherwise, if it be true that we are possessed of social, moral and intellectual natures, with wants to be supplied, with susceptibility of pain and pleasure; if they can be wounded and healed, as well as the physical part, with accompanying suffering and delight, then we think that conduct which produces perpetual social sorrow, although physical food be not withheld, may well be classified as cruel, and entitle the sufferer to relief."

While the earlier cases construe such statutes, making cruel and inhuman treatment ground for divorce, with strictness, requiring physical violence or acts putting the complainant in immediate apprehension of danger of life, limb or health, *Ring v. Ring, Supra,* the later and modern decisions seem to depart from that rule of construction, and apply a liberal construction, which makes it less difficult for parties to obtain a divorce. Therefore, it appears that *Zweig v. Zweig, Supra,* the principal case, although in conflict with the earlier decisions, is in accord with the modern authorities.